

SERVED: March 17, 1993

NTSB Order No. EA-3834

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of March, 1993

JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12947
v.)	
)	
JANE C. HARTMAN,)	
)	
Respondent.)	
)	

ORDER DISMISSING APPEAL

On February 17, 1993, the respondent filed a notice of appeal¹ from an oral initial decision the law judge rendered on February 12, affirming an order of the Administrator revoking, on an emergency basis, respondent's private pilot certificate.² In

¹Respondent's notice of appeal is dated February 16, but it is postmarked February 17.

²The law judge sustained allegations that respondent on several flights had committed various operational violations and during some periods had operated her aircraft when it was not in an airworthy condition. Specifically, respondent was charged with violating sections 91.119(a) and (b), 91.303(a) and (d), 91.307(c), 39.3, 91.7, 91.9(a), and 91.13(a) of the Federal Aviations Regulations, "FAR," 14 CFR Parts 91 and 39. These charges included, among other things, alleged flights during which respondent had been careless or reckless by engaging in aerobatic flight over a school and shopping center and by operating an aircraft at an impermissibly low altitude over an open air assembly of persons and a congested area.

a reply to the appeal, the Administrator, among other things, contends that respondent's notice of appeal was untimely because it was not filed within 2 days after the law judge's decision, as required by Section 821.57 of the Board's Rules of Practice.³

The respondent has not responded to the Administrator's contention.⁴ Nevertheless, as it does not appear that the untimeliness of respondent's appeal is excusable for good cause shown, the appeal must be dismissed. See, e.g., Administrator v. Hooper, NTSB Order No. EA-2781 (1988) and Administrator v. Mace, NTSB Order No. EA-3195 (1990).

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

³Section 821.57(a) of the Board's Rules of Practice in emergency appeals provides as follows:

"§821.57 Procedure on appeal.

(a) Time within which to file a notice of appeal and content. Within 2 days after the initial decision has been orally rendered, either party to the proceeding may appeal therefrom by filing with the Board and serving upon the other parties a notice of appeal. The time limitations for the filing of documents are not extended by the unavailability of the hearing transcript."

⁴On February 23, 1993, the respondent filed a three-page appeal brief. This, too, was late, in that Section 821.57(b) of the Board's Rules of Practice requires that an appeal brief be filed within 5 days after the notice of appeal is filed. Thus, even if respondent's notice of appeal had been timely, it would have been subject to dismissal because it was not perfected by the timely filing of an appeal brief.